

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAMES GEARY
7016 Safari Drive
Huber Heights, OH 45424

Plaintiff,

VS.

UNITED STATES OF AMERICA
C/O U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

and

DAYTON VA
MEDICAL CENTER
4100 W. Third Street
Dayton, Ohio 45428

Defendants.

CASE NO. 21-CV-224

Judge: _____

COMPLAINT

**AFFIDAVIT OF MERIT
ATTACHED**

Plaintiff, James Geary, as and for his Complaint against Defendant, United States of America, states as follows:

FACTS RELEVANT TO ALL CAUSES OF ACTION

1. This is a Federal Tort Claims Act suit brought by Plaintiff against Defendants, United States of America and the Dayton VA Medical Center, pursuant to the laws of the United States, including 28 USC 1346(b) and 28 USC 2671-2680, which provide jurisdiction in this Court for this action.

2. Plaintiff has fully complied with the requirements of the laws of the United

States, including 28 USC 2675, by filing claims with the appropriate federal agency, the United States of America, Department of Veterans Affairs, that were received on March 25, 2020.

3. Plaintiff is entitled to file suit against the Defendants because on March 2, 2021, Plaintiff's counsel received a letter denying Plaintiff's claims. A copy of the letter is attached as Exhibit 1.

4. Plaintiff had a board certified Emergency Medicine physician review the medical records and information in this case and he states that the Defendants breached the standard of care and proximately caused injuries to James Geary. An affidavit of merit and report from this expert witness are attached as Exhibits 2 and 3.

5. Defendant, the Dayton VA Medical Center ("VA Medical Center"), is and was at all times relevant, a hospital, medical center, or business duly organized under federal and/or state law, that is located in Montgomery County and held itself out to the public, including James Geary, as competent and qualified to provide safe and adequate medical care and treatment.

COUNT I – MEDICAL NEGLIGENCE

6. Plaintiff hereby incorporates all of the statements and allegations made in the previous paragraphs as if fully rewritten herein.

7. On March 13, 2019, James Geary came under the care and treatment of the Defendants at the VA Medical Center emergency department, by and through their physicians, nurses, and other health care providers; in particular, Melissa Butler, MD, with symptoms of severe right leg and foot pain. Dr. Butler discharged James after treating him with a Medrol Dose Pack.

8. On March 18, 2019, James returned to the VA Medical Center emergency department with worsening pain in his right leg and foot. He was again seen by Dr. Butler and a CT scan was performed, revealing a possible fluid collection in his foot and ankle. He was negligently discharged without additional testing.

9. On March 22, 2019, James sought help from the VA Medical Center Primary Care Clinic and George Rizk, DO, with continued right lower extremity worsening pain. He was again negligently discharged without additional testing.

10. On March 25, 2019, James returned to the VA Medical Center emergency department and was seen by Fred Gabriele, CNP with continued severe right ankle pain. He was given Prednisone but CNP Gabriele negligently failed to order additional testing to discover the cause of James' ongoing pain.

11. On March 30, 2019, James again returned to the VA Medical Center emergency department and was finally appropriately referred for a surgical consult and properly diagnosed with extensive soft tissue infection and sepsis.

12. As a direct and proximate result of the Defendants' negligence, and specifically, the collective negligence of Dr. Butler, Dr. Rizk, and CNP Garbriele, James' right lower extremity infection was permitted to progress and James was forced to undergo a below the knee amputation of his right leg on April 5, 2019.

13. As a further direct and proximate result of Defendants' negligence, James Geary has experienced conscious pain and suffering, loss of ability to perform his usual activities, permanent and substantial physical deformity, loss of a bodily organ system, past and future economic loss, and past and future medical expenses (the amount of

which is currently unknown), and other losses and damages. James' injuries and damages are permanent and progressive.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount of \$2,000,000, together with interest, reasonable attorney fees, the costs of this action, and any other relief to which he is entitled.

Respectfully submitted,

/s/ *Marc G. Pera*
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